



K A N S A S

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TO: Management of Kansas chartered credit unions

SUBJECT: Bank Secrecy Act (BSA) compliance

This Bulletin serves the purpose of alerting Kansas chartered credit unions to the increased sensitivity of BSA compliance, and brings to credit unions' attention BSA compliance is an area receiving increased emphasis during examinations in 2006. This Bulletin advises credit unions about new reporting requirements the Kansas Department of Credit Unions (KDCU) must follow and provides guidance as to the KDCU's expectations of Kansas chartered credit unions.

History

In October 2004, the Financial Crimes Enforcement Network (FinCEN) entered into agreements (known as Memorandums of Understanding) with all federal banking regulators, including the National Credit Union Administration (NCUA), concerning the reporting of significant BSA violations. FinCEN, under delegated authority from the Department of the Treasury, has overall authority for enforcement and compliance of financial institutions with the BSA. The agreement went into effect on December 1, 2004.

KDCU signed a similar agreement with FinCEN on March 24, 2006. Unless prohibited by state statute, all other state credit union and bank regulators will be bound to similar reporting requirements.

Ultimately, the collective goal of the parties is to enhance communication and coordination to help financial institutions identify, deter and interdict terrorist financing and money laundering. While BSA is not a new requirement, it has recently been the focus of heightened attention. Due to these pressures by Congress, FinCEN is indicating the "honeymoon" with BSA compliance is now over and compliance is mandatory and expected.

Reporting Expectations of KDCU

Under the agreement entered into by KDCU and FinCEN, KDCU is expected to identify and report significant BSA compliance violations directly to FinCEN.

Correction of Violations

Once a significant BSA violation has been identified by examiners, it is important credit union management correct the violation as soon as possible. KDCU examiners will set-up a time frame for the BSA violation to be corrected. This time frame will be no longer than 90 days from the date the violation was discovered by the examiner.

Individual credit unions will be required to forward documentation to the KDCU office showing the significant BSA violation was satisfactorily corrected. After the KDCU verifies that satisfactory correction was made, KDCU will notify FinCEN of the resolution. It is imperative all significant BSA violations be corrected within 90 days of identification by KDCU examiners.

The Basics of BSA

KDCU recommends credit union management be proactive in identifying weaknesses and problems in their credit union's BSA compliance program. Specifically, credit unions should take the following steps to ensure BSA compliance:

- Enact strong BSA policies and procedures, which cover the required elements of BSA;
- Develop a system of internal controls to ensure ongoing BSA compliance;
- Assure employees receive sufficient BSA compliance training;
- Test for BSA compliance, either by independent credit union staff or officials, or by an independent third party;
- Document your credit union is properly meeting the BSA compliance requirements and retain this documentation; and
- Stress the importance of BSA compliance to all staff members.

What makes a satisfactory BSA policy will depend on the individual credit union. The highlights of a satisfactory program would include the following:

- Customer Identification Program (CIP)
 - Identification of a member's name, date-of-birth, address, and identification number prior to account opening;
 - Verification of the information obtained.
- Currency Transaction Report (CTR) Filings
 - Are CTRs filed timely (within 15 days) when necessary (involves more than \$10,000 (per day) in cash-in or cash-out)?
 - Does the credit union properly exempt permitted people from filing CTRs by filing a "Designation of Exempt Person" form?
- Suspicious Activity Reports (SAR) Filings
 - Are SARs filed within 30 days after discovery of a suspicious activity?
 - Is staff aware of what activity might be termed "suspicious"?

- OFAC - Searching OFAC Lists for Prohibited Countries, Organizations and Individuals

- Does the credit union block or freeze accounts and transactions that are found to match the prohibited OFAC listing?
- Does the credit union report this information to FinCEN immediately?

- Money Transfer Services

- Credit unions that provide money transfer services (i.e. wire transfers) must obtain and record specific information on each money transfer of \$3,000 or more.

- Maintain Necessary Information for the Purchase or Issuance, by Currency, Credit Union Checks, Cashiers Checks, Travelers Checks, and Money Orders for Amounts Between \$3,000 and \$10,000.

- Documented Annual Independent Testing of the Credit Union's BSA Compliance Program.

However, it should be noted the above is not all-inclusive of a satisfactory policy. If assistance is needed, it is recommended you contact KDCU, or the Kansas Credit Union Association.

Other BSA Compliance Requirements

The importance of following BSA requirements cannot be over-emphasized. Federal government regulators, FinCEN, The Department of Homeland Security, OFAC and others, have elevated even more the importance of blocking transactions occurring at financial institutions which might benefit terrorism and drug trafficking.

To this end, they have elevated the importance of BSA and are requiring all financial institutions, including credit unions and their regulators, to elevate the importance of examining for BSA compliance. Federal monetary penalties can be assessed to financial institutions who do not comply with BSA; and both criminal charges and civil money penalties can be brought against individuals who are willfully non-compliant with BSA requirements.

Senior management, including the Board of Directors, will need to ensure their credit union's policy and procedures are compliant with BSA, employees are properly trained on BSA, and appropriate internal controls are in place to ensure employees are properly implementing these policies and procedures.

The requirements for BSA compliance do not vary based on the asset size of the credit union; however, the cost and type of action to achieve compliance will vary. For example, a small credit union which does not handle cash would need to have a BSA policy, but this credit union will have a very different policy (less complex and much smaller) than a large, multi-branch credit union.

Frequently Asked Questions and Answers Regarding BSA Compliance

1. If a credit union has a BSA policy but it does not include all the required elements, is it a significant violation?

Yes. A credit union must have a BSA policy addressing all the required elements. If the BSA policy incorporates one or more required elements via referencing other written policies, this is acceptable.

An existing policy which needs improvement, but contains all the required elements, may not be a significant violation. Determination of the existence of a significant BSA violation will depend on examiner judgment. Examiners should consider: 1) whether the policy is generally appropriate for the size and complexity of the credit union; 2) if the policy reflects the products and services offered by the credit union; and 3) if weak elements can be strengthened in a rapid manner (less than 3 months) with minimal or no examiner oversight.

2. If a credit union cannot locate its written policy but is following adequate procedures, is there a violation?

Yes. A credit union must have a board approved written policy. For example, this would occur when a credit union cannot readily produce its policy for review. No written policy is a pervasive violation, even if adequate procedures exist.

3. If a credit union generally files currency transaction reports (CTRs), but missed one or two during the exam periods, is there a violation?

It depends on examiner judgment examiners will consider: 1) the number of CTRs filed during a year and 2) the reason that the CTR was improperly filed. If a CU usually files 10 CTRs each year and forgets 2, this is a significant BSA violation. If a CU usually files 1,000 CTRs each year and forgets 2, this is probably not a significant BSA violation. In general, if the rate of error is more than 1 percent or greater than 20 CTRs, an examiner should assess the violation as significant. In both cases, the CU must back-file the incomplete CTR, audit its filings to ensure no others were missed, and strengthen internal controls to reduce the likelihood that future CTRs will not be filed timely.

4. If CU staff members were given BSA training when they were initially hired but have not had training within a couple years, is there a violation?

It depends on examiner judgment examiners should consider: 1) whether changes have occurred in staffing (new hires); 2) if continuing staff retain knowledge of BSA requirements (up to date policies, regular completion of CTRs); 3) whether person(s) charged with oversight of the BSA program have sufficient knowledge to catch and correct errors; and 4) if a process exists to identify staff members with inadequate BSA awareness and provide them with training.

5. If CU staff tell the member to break up a large cash deposit into smaller amounts to avoid filing a CTR (in the interest of customer service), is there a significant violation? Does the CU have to file a CTR anyway?

Yes, splitting deposits to avoid reporting or “structuring” is a significant BSA violation. In this case, a CTR must still be filed if the member’s total daily cash deposits are over \$10,000. In addition, a SAR must also be filed, regardless of the amount. This scenario demonstrates inadequate staff training (staff suggested the member engage in structuring – a money laundering activity), an inadequate process for aggregating transactions (staff doesn’t anticipate the CU will “find” transactions if they are split), and weak oversight of the BSA program.

6. Do small/non-cash operation CUs have to meet the same standards as large CUs?

Yes, but the cost and type of action taken to achieve compliance will vary. For example, all CUs must have a written BSA policy. A small, non-cash CU would probably have a smaller less complex policy than a large, multi-branch CU. Nevertheless, the small CU's written policy would need to address all products and services offered by the CU, and establish a reasonable method for verifying member identity (when a new loan or share account is opened).

7. Will our credit union be examined separately for BSA compliance?

KDCU is taking a dual approach. KDCU is completing the BSA compliance examination as part of the normal examination process. In addition, separate BSA compliance reviews are being conducted to accelerate the rate at which Kansas Chartered credit unions are brought into compliance.

8. Are the examiners and KDCU eager to find credit unions which are not in compliance?

No. The examiner will discuss the problem and recommend corrective actions. If possible, KDCU will encourage the credit union to correct the problem while the examination is still in progress. For example, the credit union may need to update its policy, schedule training, arrange for independent testing or file CTR’s. Prompt resolution of the problem is our goal and intent in distributing this bulletin.

We are providing this bulletin in order to minimize the possibility of additional action from KDCU, NCUA and FinCEN. If you have any questions, please do not hesitate to call your examiner or the KDCU office at 785-296-3021.

Other Resources

FinCEN – www.fincen.gov (click on BSA guidance)

CUNA Compliance - www.cuna.org/compliance (webinars & training)

CUNA **“Bank Secrecy Act Compliance Guide”** (Available free to members on CUNA website)

Kansas Credit Union Association



John P. Smith, Administrator

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